



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**INSOLVENCY CAUSE NO. 6 OF 2016**

**IN THE MATTER OF SPENCON HOLDINGS LIMITED**

**MUNIU THOITHI.....PETITIONER/APPLICANT**

**VERSUS**

**SPENCON HOLDINGS LIMITED.....RESPONDENT**

**JUDGMENT**

1. The petitioner herein, **Muniu Thoithi**, filed the petition dated 7<sup>th</sup> November 2018 seeking the following orders: -

- 1) THAT SPENCON HOLDINGS LIMITED be liquidated by the court under the provisions of section 424(1)(e) and 425 (1)(d) of the insolvency Act No 18 of 2015.**
- 2) THAT MUNIU THOITHI and KURIA MUCHIRU be appointed as joint liquidators for purposes of winding up the affairs of the Company.**
- 3) THAT the costs of this application be in the cause and be paid out of the assets of the Company.**
- 4) THAT such other order be made as this Honourable Court may deem just and expedient in the circumstances.**

2. The petition is brought pursuant to Section 424(1)(e) and 425(1)(d) of the Insolvency Act 2015.

3. The Petitioner's case is that the Company ought to be liquidated as it has been in administration in Insolvency Cause No. INP 6 of 2016 and that the term of the administrators had expired without payment of creditors including secured creditors. It was therefore the Petitioner's position that it is necessary, in the circumstances of the case, that the Company be properly wound up through liquidation by the court.

4. The Petitioner states that in the Joint Administrators' Report and Statement of Proposals that were approved by the creditors, it was proposed that at the end of the Administration, the Administrators, Muniu Thoithi and Kuria Muchiru, be appointed as joint liquidators, and that any act required or authorized to be done by the Joint Liquidators be done by either or all of them.

5. The question before the court is whether the petitioner has made out a case for liquidating the Company. The petitioner invoked the provisions of Sections 424(1)(e) and 425(1)(d) of the Insolvency Act which state as follows: -

***Section 424(1) -The Court may liquidate a company if it is unable to pay its debts.***

***Section 425(1)(d) -A provisional liquidator or administrator may apply to the Court for the liquidation of the Company.***

***Section 427(1) of the Act provides that: -***

***“(1) On the hearing of a liquidation application, the Court may make such of the following orders as it considers appropriate:***

***(a) an order dismissing the application;***

***(b) an order adjourning the hearing, conditionally or unconditionally;***

*(c) an interim liquidation order; or*

*(d) any other order that, in its opinion, the circumstances of the case require”.*

6. In